

United States
Circuit Court of Appeals
For the Ninth Circuit.

NG MON TONG,

Appellant,

vs.

LUTHER WEEDIN, United States Commissioner
of Immigration at the Port of Seattle, Wash-
ington,

Appellee.

Transcript of Record.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

Mr. S. A. KEENAN, Attorney for Appellant,
458 Empire Building, Seattle, Washington.

Mr. ANTHONY SAVAGE and Mr. HAMLET P.
DODD, Attorneys for Appellee,
310 Federal Building, Seattle, Washington.

[1*]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 20,362.

In the Matter of the Application of NG MON
TONG for a Writ of Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable JEREMIAH NETERER, Judge
of the United States District Court for the
Western District of Washington, Northern
Division:

The petition of Ng Mon Tong respectfully shows
to this court:

That said Ng Mon Tong is confined and re-
strained of his liberty at the Immigration Station
at the City of Seattle, State of Washington, by
Luther Weedin, United States Commissioner of Im-
migration, under and by virtue of an order of de-

*Page-number appearing at the foot of page of original certified
Transcript of Record.

portation by James J. Davis, Secretary of Labor of the United States, which order of deportation directs that petitioner be deported to the Republic of China. That said order of deportation was and is void and contrary to law, and this petitioner is illegally confined and restrained of his liberty thereunder for the following reasons:

I.

That petitioner is of the age of thirteen years and was born in the now Republic of China. That petitioner's father, one Ng Ngin, is a native-born citizen of the United States of America, and this petitioner is a citizen of the United States of America.

II.

That on or about the 30th day of December, 1929, this petitioner landed at the Port of Seattle, State of Washington, en route from the Republic of China, and was then and there and ever [2] since has been held and detained by said Immigration Commissioner. That after inquiry and examination before said Commissioner of Immigration petitioner was denied admission to the United States by said Commissioner from which decision petitioner appealed to the Secretary of Labor of the United States, which appeal was dismissed and petitioner ordered to be deported to the Republic of China.

III.

That the evidence taken before the Board of Inquiry in the matter of the application of petitioner

to land in the United States shows that petitioner is a citizen of the United States, and there was no evidence taken before said Board that petitioner was not a citizen of the United States. That the order denying petitioner admission into the United States and the said order of deportation was and is contrary to the law and the evidence.

WHEREFORE, petitioner prays that this Honorable Court order that a writ of habeas corpus issue from this court directed to the said Luther Weedin, Commissioner of Immigration at Seattle, Washington, commanding him forthwith to produce the body of petitioner before this court then and there to inquire into the legality of his detention, or, in the alternative, that this court issue its order commanding the said Commissioner of Immigration to show cause at a time and place to be fixed by the court, why said writ of habeas corpus should not issue.

And that petitioner be restored to his liberty.

S. A. KEENAN,

Attorney for Petitioner.

State of Washington,
County of King,—ss.

Ng Mon Tong, being first duly sworn on oath, deposes and says: That he is the petitioner named in the foregoing petition for a writ of habeas corpus; that he has read the said petition, knows the contents thereof and believes the same to be true.

NG MON TONG,

(In Chinese Characters.)

missioner of Immigration at Seattle, Washington, show cause, if any he have, before this court on the 12th day of May, 1930, at ten o'clock in the forenoon of said day, why a writ of habeas corpus should not issue from this court commanding him, the said Luther Weedin, Commissioner as aforesaid, to produce the body of said Ng Mon Tong before this court, at a time and place to be fixed by the court, then and there to inquire into the legality of his caption and detention.

Done in open court this 30th day of April, 1930.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed Apr. 30, 1930. [4]

[Title of Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE.

To the Honorable JEREMIAH NETERER, Judge
of the United States District Court for the
Western District of Washington:

Comes now the respondent, Luther Weedin, United States Commissioner of Immigration at the port of Seattle, Washington, and for answer and return to the order to show cause entered herein certifies and shows to this court that the petitioner, Ng Mon Tong, was detained by the said United States Commissioner of Immigration at the time he arrived at the port of Seattle, Washington,

to wit: December 30, 1929, as an alien Chinese person not entitled to admission into the United States under the laws of the United States, pending a decision on his application for admission as a citizen of the United States by virtue of being a foreign-born son of Ng Ngin, a native-born citizen of this country; that, after a hearing before a legally constituted Board of Special Inquiry at the Seattle, Washington, Immigration Station, the application of the said Ng Mon Tong for admission into the United States was denied by the said Board of Special Inquiry for the reason that his claim to be a son of Ng Ngin had not been satisfactorily established; and for the further reasons that he was an alien not in possession of an unexpired immigration visa, and was an alien ineligible to citizenship coming to the United States in violation of Section 13 (c) of the Immigration Act of 1924; that the said Ng Mon Tong appealed from the decision of the Board of Special Inquiry to the Secretary of Labor; that his appeal was dismissed by the Secretary [5] of Labor and his return to China directed; that, since the final decision of the Secretary of Labor, this respondent has held, and now holds and detains, the said Ng Mon Tong for deportation to China as an alien Chinese person not entitled to admission into the United States under the laws of the United States, and subject to deportation to China under the laws of the United States.

The original record of the Department of Labor and all exhibits, both on the hearing before the Board of Special Inquiry at the Seattle, Washing-

[Title of Court and Cause.]

DECISION.

May 26, 1930.

S. A. KEENAN, Attorney for Petitioner.

ANTHONY SAVAGE, U. S. Attorney, HAMLET
P. DODD, Asst. U. S. Attorney, JOHN F.
DUNTON, U. S. Immigration Service, on the
Brief, Attorneys for Respondent.

NETERER, District Judge.—An examination of the entire record in this case forces the conclusion that the writ must be denied. The court can only interfere in such cases of flagrant disregard of fundamental principles of justice as constitute a denial of due process. The jurisdiction of the court is limited to ascertain whether there is any evidence to support the conclusion of the Department of Labor, and not whether the court would come to the same conclusion in passing upon the testimony produced. The conclusion of the immigration authorities is binding upon the court, and unless there is no evidence, its jurisdiction ends.

The petitioner on his arrival here claimed to be twelve years and about one month of age. He could not be older and come within any of the testimony to show his filial relationship. The photograph taken by the Department on his arrival, which is in the record, shows a boy much more than twelve years of age. The certificate of the doctor is in the record, that he made an examination of

the teeth, sexual development and general appearance, which shows that he was not less than seventeen years of age. The members of the Board saw and observed the petitioner and each [7] expressed an opinion, which is in the record, that the petitioner was not less than seventeen—one said sixteen—years of age. It may be recognized as common knowledge that the physical changes in an individual between twelve and sixteen years are perhaps greater and more perceptible than during any other period of development, except during infancy. It is the puberty age where the individual transforms from one physical status into another; and this is especially pronounced with relation to sex attributes. There is not so much disagreement with relation to family history and relation in the testimony as in some cases, and yet there is disagreement which should not obtain if the relation of father and son obtains. There is likewise disagreement as to physical surroundings which would appear to be more than inadvertent, or slips of memory, the petitioner testifying one way and the alleged father and an alleged brother testifying the other way. Without further analysis or discussion, the petition will be denied.

NETERER,

United States District Judge.

[Endorsed]: Filed May 26, 1930. [8]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 20,362.

In the Matter of the Application of NG MON
TONG for Writ of Habeas Corpus.

JUDGMENT AND ORDER.

This cause having duly come on for hearing before this court on the 12th day of May, 1930, on the return of the United States Commissioner of Immigration to the order to show cause theretofore entered herein, the respective parties being represented by their attorneys of record, S. A. Keenan for the petitioner, and Anthony Savage and Hamlet P. Dodd, United States Attorney and Assistant United States Attorney, respectively, for the respondent, and the Court, being fully advised in the premises, having on the 26th day of May, 1930, signed and entered herein its written opinion directing the denial of the petition,—

NOW, THEREFORE, it is by this Court ORDERED, ADJUDGED AND DECREED that the writ of habeas corpus as prayed for be, and the same is hereby, DENIED, and that the said Ng Mon Tong be deported to China; provided, however, that he may within five days file notice of appeal and, in the event that the appeal be taken, the United States Commissioner of Immigration at the port of Seattle, Washington, shall be, and he hereby is, restrained from deporting the said Ng

Mon Tong until hearing and decision on such appeal by the United States Circuit Court of Appeals for the Ninth Circuit, or by the United States Supreme Court in the event the cause be taken to that court on appeal. Notice of this order to be given by mail forthwith by the U. S. Atty.

Done in open court this 2d day of June, 1930.

JEREMIAH NETERER,
United States District Judge.

[Endorsed]: Filed Jun. 2, 1930. [9]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To Hon. LUTHER WEEDIN, United States Commissioner of Immigration for the Port of Seattle, and to ANTHONY SAVAGE and HAMLET P. DODD, His Attorneys:

You and each of you are hereby notified that Ng Mon Tong applicant above named, hereby and now appeals from that certain order, judgment and decree made herein by the above-entitled court on June 2, 1930, adjudging and holding that the above-named petitioner be denied a writ of habeas corpus, and from the whole thereof, to the *United Circuit Court of Appeals for the Ninth Judicial Circuit.*

Dated this 9th day of June, 1930.

S. A. KEENAN,
Attorney for Appellant.

Received a copy of the within notice this 9th day of June, 1930.

ANTHONY SAVAGE,
Attorney for Respondent.

[Endorsed]: Filed Jun. 9, 1930. [10]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Ng Mon Tong, the applicant above named, deeming himself aggrieved by the order and judgment entered herein on the 2d day of June, 1930, does hereby appeal from said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that a transcript and record of the proceedings and papers upon which said order and judgment is made, fully authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States.

And said petitioner respectfully prays this Honorable Court that this petition for appeal may be granted.

Dated this 2d day of June, 1930.

S. A. KEENAN,
Attorney for Appellant.

[Endorsed]: Filed Jun. 9, 1930. [11]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes said applicant and states that the Court erred in the following particulars in denying to applicant a writ of habeas corpus as prayed for:

1. The Court erred in holding and deciding that a writ of habeas corpus should be denied applicant herein.

2. The Court erred in holding that there is any evidence in the record whatever substantiating the findings of the Commissioner of Immigration in holding that the applicant is not the son of Ng Ngin.

3. The Court erred in sustaining each and all of the findings of the Commissioner of Immigration upon which he *denied admission* into this country as a citizen of the United States.

4. The Court erred in holding that the applicant, Ng Mon Tong was not eligible for admission to the United States.

5. The Court erred in refusing to hold that this applicant was denied a fair and impartial hearing.

Dated this 9th day of June, 1930.

S. A. KEENAN,
Attorney for Appellant and Applicant.

[Endorsed]: Filed Jun. 9, 1930. [12]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon filing and reading of the petition for appeal in the above-entitled matter and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED that the appeal be allowed as prayed for; conditioned upon the applicant filing a good and sufficient bond in this cause in the penal sum of \$250, with the usual conditions of appeal bonds from this court and with a further condition that applicant will reimburse United States for all costs and expenses for his maintenance during the pendency of this appeal.

Dated this 9th day of June, 1930.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed Jun. 9, 1930. [13]

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY,
BALTIMORE, MARYLAND.

No. —.

\$250.00

[Title of Court and Cause.]

APPEAL BOND.

KNOW ALL MEN BY THESE PRESENTS:
That we, NG MON TONG, as principal, and the

United States Fidelity & Guaranty Company, a corporation of Baltimore, Maryland, as surety, jointly and severally acknowledge ourselves to be indebted unto the United States of America in the sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, lawful money of the United States of America, under the following conditions:

WHEREAS, lately in the District Court of the United States for the Western District of Washington, Northern Division, in a petition by Ng Mon Tong for a writ of habeas corpus, a certain judgment and order of deportation dated June 2, 1930, was made and entered denying petitioner's application for a writ of habeas corpus and ordering him deported and petitioner has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco in said Circuit to reverse said judgment and order of deportation.

NOW, THEREFORE, the condition of the above obligation is such that if the said Ng Mon Tong shall prosecute his appeal to effect and answer all costs if they fail to make their plea good, together with all costs and expenses for his maintenance during the pending of this appeal, then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed and delivered this 9th day of May,
A. D. 1930.

NG MON TONG,
By S. A. KEENAN,
His Atty.,
Principal.

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY,

[Seal] By C. H. CAMPBELL,
Attorney-in-Fact.

Approved June 16, 1930.

NETERER,
Judge.

[Endorsed]: Filed Jun. 16, 1930. [14]

[Title of Court and Cause.]

STIPULATION RE ORIGINAL EXHIBITS.

It is hereby stipulated and agreed by and between the United States District Attorney for the Government, and S. A. Keenan, attorney for applicant and appellant, that the evidence, exhibits, and the record made before the Commissioner of Immigration for the port of Seattle, as well as the orders and decisions of the Commissioner of Labor, be transmitted with the record on appeal without being transcribed; and it is further stipulated that both parties to this action waive the necessity of printing of said record made before Commissioner of Immigration as well as said exhibits in the United States Circuit Court of Appeals.

Dated at Seattle, this 9th day of June, 1930.

JEFFREY HEIMAN,
Asst. United States District Attorney.
S. A. KEENAN,
Attorney for Applicant and Appellee.

Acting Commissioner.

[Endorsed]: Filed Jun. 9, 1930. [15]

[Title of Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL
RECORD.

Upon reading and considering the stipulation in this case relative to the transmission of the record to the Circuit Court of Appeals, this day filed,—

IT IS HEREBY ORDERED that the Clerk of this court may transmit to the Clerk of the Circuit Court of Appeals the original records, including all exhibits, used on the hearing before the Commissioner of Immigration for the port of Seattle and that he need not make a transcript of the same or any part thereof.

Dated at Seattle, Washington, this 9th day of June, 1930.

JEREMIAH NETERER,
Judge.

S. A. KEENAN,
Acting Commissioner.

[Endorsed]: Filed Jun. 9, 1930. [16]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said United States District Court:

You will please, in the preparation of the record on appeal in this case, include in that record:

1. The record from the Commissioner of Immigration, filed in this court, including all evidence, exhibits, and the record made before the Commissioner of Immigration for the port of Seattle, as well as the orders and decisions of the Commissioner of Labor, as per stipulation.
2. Petition for a writ of habeas corpus.
3. Order to show cause.
4. Return to order to show cause.
5. Decision of the Court on the application for writ.
6. Order denying writ of habeas corpus.
7. Petition for appeal.
8. Notice of appeal.
9. Order allowing appeal.
10. Assignment of errors.
11. Citation.
12. Order for transmission of original record.
13. This praecipe.
14. Stipulation.
15. Appeal bond.

S. A. KEENAN,
Attorney for Applicant.

[Endorsed]: Filed Jun. 10, 1930. [17]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 17, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel, filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant herein, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [18]

Clerk's fees (Act Feb. 11, 1925), for making record, certificate or return, 25 folios at 15¢	\$3.75
Certificate of Clerk to Transcript of Record ..	.50
Certificate of Clerk to Original Exhibits50
Appeal fee, Section 5 of Act	5.00
<hr/>	
Total	\$9.75

I hereby certify that the above cost for preparing and certifying record, amounting to \$9.75, has been paid to me by the attorney for appellant.

I further certify that I attach hereto and transmit herewith the original citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court, at Seattle, in said District this 19 day of June, 1930.

[Seal] ED. M. LAKIN,
Clerk U. S. District Court, Western District of
Washington.

By I. W. Egger,
Deputy. [19]

[Title of Court and Cause.]

CITATION.

United States of America,—ss.

To the Honorable LUTHER WEEDIN, United States Commissioner of Immigration at the Port of Seattle, Washington, GREETING:

WHEREAS, Ng Mon Tong has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment, order and decree lately, on, to wit, the 2d day of June, 1930, rendered in the District Court of the United States for the Western District of Washington, made in favor of you, adjudging and decreeing that the writ of habeas corpus as prayed for in the petition herein be denied.

You are therefore cited to appear before the United States Circuit Court of Appeals, in the city of San Francisco, State of California, within the time fixed by statute, to do and receive what may obtain to justice to be done in the premises.

Given under my hand in the City of Seattle, in the Ninth Circuit, the 9th day of June, 1930, in the year of our Lord nineteen hundred thirty, and of the Independence of the United States the one hundred fifty-fourth.

June 9th, 1930.

[Seal]

JEREMIAH NETERER,
Judge.

Received a copy of the within citation this 9 day of June, 1930.

ANTHONY SAVAGE,
Attorney for Respondent.

[Endorsed]: Filed Jun. 9, 1930. [20]

[Endorsed]: No. 6172. United States Circuit Court of Appeals for the Ninth Circuit. Ng Mon Tong, Appellant, vs. Luther Weedin, United States Commissioner of Immigration at the Port of Seattle, Washington, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed June 23, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.